

## INITIAL STATEMENT OF REASONS

### DESCRIPTION OF THE PUBLIC PROBLEM, ADMINISTRATIVE REQUIREMENTS, OR OTHER CONDITIONS OR CIRCUMSTANCES THE REGULATIONS ARE INTENDED TO ADDRESS

The Help America Vote Act of 2002 (HAVA) (42 U.S.C. 15301, et seq.), which was signed into law by the President on October 29, 2002, provides federal funding to states conditioned upon the planned implementation of certain requirements, including the establishment of a statewide database. Section 15483 of HAVA requires that each state having voter registration requirements shall, through the chief state elections official, establish a single, uniform, official, centralized, interactive computerized statewide voter registration list. The proposed regulations will establish standards and procedures for processing, transmitting, and maintaining voter registration records in compliance with the requirements of HAVA Section 15483.

### SPECIFIC PURPOSE OF THE REGULATIONS; NECESSITY

The Secretary of State proposes to adopt Sections 20108 through 20108.80 of Chapter 2 of Division 7 of Title 2 of the California Code of Regulations, as set forth in the proposed text of the regulations, for the purpose of complying with the provisions of HAVA section 15483, and as more fully explained below.

**Section 20108** sets forth the purpose of the proposed chapter, which is to establish standards and procedures for processing, transmitting, and maintaining voter registration records in a manner that conforms with the statewide voter registration list requirements set forth in HAVA. Section 20108 further states that the proposed regulations apply to the Secretary of State and all elections officials within the State of California. This provision is necessary to state the purpose of the proposed regulations, and the persons to whom the regulations will apply.

**Section 20108.1** of the proposed regulations provides definitions for certain terms used in the regulations. This provision is necessary to enable persons directly affected by the regulations to easily understand the terms used in those regulations and thus the meaning of the regulations, satisfying the requirement of clarity pursuant to Government Code section 11349(c).

**Section 20108.12** provides for a five-day time period within which an election official shall perform and complete a requested action concerning a voter's registration record pursuant to the California Elections Code. Performance shall not be considered complete until the elections official has submitted the fully complete and updated files or full load files to Calvoter.<sup>1</sup> This provision is necessary to comply with HAVA section 15483(a)(1)(A)(vi), which requires that "all voter registration information obtained by any local election official in the State shall be

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<sup>1</sup> Calvoter is defined in section 20108.1 of these regulations as "the Secretary of State's computer application, system and hardware that receives, transmits, and stores voter registration data for all registered voters in California pursuant to the requirements of Section 303 of HAVA."

electronically entered into the computerized list on an expedited basis at the time the information is provided to the local official.”

**Section 20108.15** sets forth the requirements for the exchange, updating and correction of registration information data by elections officials and the Secretary of State through the Calvoter workstations, with these records to be compliant with the *Calvoter and Calvalidator Data Standards*.<sup>2</sup> In addition, this section provides information on how to obtain a copy of the publication entitled *Calvoter and Calvalidator Data Standards*. This provision is necessary to comply with HAVA section 15483(a)(4), which requires that the State system “shall include provisions to ensure that voter registration records in the State are accurate and are updated regularly,” section 15483(a)(1)(A)(iv), which requires that “The computerized list shall be coordinated with other agency databases within the State,” and section 15483(a)(1)(A)(v), which states that “Any election official in the State, including any local election official, may obtain immediate electronic access to the information contained in the computerized list.”

**Section 20108.18** of the proposed regulations provides that the official statewide voter registration list shall be maintained in Calvoter, and sets forth specific requirements for the official statewide voter registration list, including use of the list and pre-election deadlines for submission of voter information to the list. This provision is necessary to comply with HAVA sections 15483(a)(1)(A)(i), which states, “The computerized list shall serve as the single system for storing and managing the official list of registered voters throughout the State,” and 15483(a)(1)(A)(viii), which provides, “The computerized list shall serve as the official voter registration list for the conduct of all elections for Federal office in the State.”

**Section 20108.20** provides requirements for elections management systems that receive information from and submit information to Calvoter. The section also specifies the voter information that shall be maintained and processed by the elections management systems and requires information concerning voters who register by mail. This provision is necessary to comply with HAVA section 15483(a)(1)(A)(ii), which requires that “the computerized list contains the name and registration information of every legally registered voter in the State,” section 15483(a)(5), which sets forth requirements for verification of voter registration, and section 15483(b), which sets forth the requirements for voters who register by mail.

**Section 20108.25** sets forth the criteria for determining whether registration records received from elections officials are deficient, and how such deficient records should be handled. This provision is necessary to comply with HAVA section 15483(a)(1)(A)(ii), which requires that “the computerized list contains the name and registration information of every legally registered voter in the State.”

**Section 20108.30** provides requirements for the Secretary of State’s processing and transmittal to the county election officials of the driver’s license and state identification file from the

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<sup>2</sup> Calvalidator is defined in section 20108.1 of these proposed regulations as “the Secretary of State’s computer application and system used to validate the California driver’s license or state identification number or the last four digits of the social security number of new or existing registrants.” A copy of the data standards is included in this rulemaking package.

California Department of Motor Vehicles, and the subsequent transfer of full load files to Calvoter. This provision is necessary to comply with HAVA section 15483(a)(1)(A)(ii), which requires that “the computerized list contains the name and registration information of every legally registered voter in the State,” and section 15483(a)(1)(A)(vi), which requires that “All voter registration information obtained by any local election official in the State shall be electronically entered into the computerized list on an expedited basis at the time the information is provided to the local official.”

**Section 20108.35** concerns the requirement for continuous submission of active voter files to Calvoter by elections officials, and **Section 20108.36** concerns the requirement for continuous submission of inactive voter files to Calvoter by elections officials. These provisions are necessary to comply with HAVA section 15483(a)(1)(A)(vi), which requires that “All voter registration information obtained by any local election official in the State shall be electronically entered into the computerized list on an expedited basis at the time the information is provided to the local official” and section 15483(a)(4), which requires that “The State election system shall include provisions to ensure that voter registration records in the State are accurate and are updated regularly.”

**Section 20108.38** sets forth additional requirements for processing voter registration applications submitted by mail for new voters, including verification of proof of identity using Calvalidator. The section also requires new voters who registered by mail to provide proof of identity at the polls the first time they vote in a Federal election, where proof of identity was not previously provided. This requirement is necessary to comply with HAVA section 15483(a)(5)(A), which requires verification of voter registration information, and section 15483(b)(2)(A), which sets forth identification requirements for new voters who register by mail.

**Section 20108.40** concerns the processing of new registration records or changes to existing registration records, and transmission of that information to Calvoter. This provision is necessary to comply with HAVA section 15483(a)(1)(A)(vi), which requires that “All voter registration information obtained by any local election official in the State shall be electronically entered into the computerized list on an expedited basis at the time the information is provided to the local official.”

**Section 20108.45** requires an elections official who completes changes in the assignment of precincts to any state or federal political jurisdiction to transmit an updated precinct file to Calvoter. This provision is necessary to comply with HAVA section 15483(a)(1)(A)(vi), which requires that “All voter registration information obtained by any local election official in the State shall be electronically entered into the computerized list on an expedited basis at the time the information is provided to the local official.”

**Section 20108.50** provides that the Secretary of State shall conduct monthly voter registration list maintenance using a change of address service or services based on the United States Postal Service National Change of Address (NCOA) database to identify address changes for registered voters, and shall transmit that information to elections officials. Section 20108.50 further requires elections officials to process a change of address notice within five days of receipt of the notice from the Secretary of State and submit the changes to Calvoter. This provision is

necessary to comply with HAVA section 15483(a)(1)(A)(vi), which requires that “All voter registration information obtained by any local election official in the State shall be electronically entered into the computerized list on an expedited basis at the time the information is provided to the local official,” and section 15483(a)(4), which requires that “The State election system shall include provisions to ensure that voter registration records in the State are accurate and are updated regularly.”

**Section 20108.51** requires an elections official to update a voter registration record within five business days of receipt of Department of Motor Vehicles information identifying a change of address for a voter, and to submit the registration update file or full load file to Calvoter. This provision is necessary to comply with HAVA section 15483(a)(1)(A)(vi), which requires that “All voter registration information obtained by any local election official in the State shall be electronically entered into the computerized list on an expedited basis at the time the information is provided to the local official.”

**Section 20108.55** requires the Secretary of State to compare voter registration records with records of deceased persons from the Department of Health Services and records of persons with felony convictions ineligible to vote from the Department of Corrections and Rehabilitation. The section further requires the Secretary of State to notify elections officials of potential matches to information in Calvoter, and requires the election officials to process the death or felony records in accordance with these regulations. This provision is necessary to comply with HAVA section 15483(a)(2), which requires the State election official to coordinate with the State agency records on felony status and the State agency records on death for purposes of removing names of ineligible voters from the official computerized voter registration list, and section 15483(a)(1)(A)(vi), which requires that “All voter registration information obtained by any local election official in the State shall be electronically entered into the computerized list on an expedited basis at the time the information is provided to the local official.”

**Section 20108.60** requires the Secretary of State to conduct checks at least once per month within the Calvoter statewide registration list to identify potential duplicate registrations for the same voter within that list, and to notify the appropriate county if a duplicate is found. Section 20108.60 also requires the elections official to act on this information within five business days of receipt of the notice, and submit updated information to Calvoter. This provision is necessary to comply with HAVA section 15483 (a)(2)(B)(iii), which requires the State election official to conduct list maintenance in a manner which ensures that duplicate names are eliminated from the computerized list, and section 15483(a)(1)(A)(vi), which requires that “All voter registration information obtained by any local election official in the State shall be electronically entered into the computerized list on an expedited basis at the time the information is provided to the local official.”

**Section 20108.65** requires the elections official to verify a registration applicant’s California driver’s license or state identification number, or the last four digits of the registrant’s social security number using Calvalidator. Section 20108.65 also provides for the issuance of a unique identifying number to the registrant if the elections official is unable to verify an applicant’s California driver’s license or state identification number, or the last four digits of the registrant’s social security number, or if the applicant has not been issued a California driver’s license or

state identification number or social security number, but the applicant is otherwise eligible to vote. This provision is necessary to comply with HAVA section 15483(a)(5)(A), which requires a registration applicant to provide a driver's license number or the last four digits of his social security number with the application for registration, provides for the issuance of a unique identifying number to the applicant if he has not been issued a current and valid driver's license or social security number, and requires that the state verify the sufficiency of the information provided.

**Section 20108.70** sets forth the steps to be taken by an elections official when a registration application does not include a California driver's license or state identification number or the last four digits of the registrant's social security number. This section also provides for the issuance of a unique identifying number to the registrant if the driver's license or state identification number cannot be identified or verified using Calvalidator. This provision is necessary to comply with HAVA section 15483(a)(5)(A), which requires a registration applicant to provide a driver's license number or the last four digits of his social security number with the application for registration, provides for the issuance of a unique identifying number to the applicant if he has not been issued a current and valid driver's license or social security number, and requires that the state verify the sufficiency of the information provided.

**Section 20108.71** provides that if at any time the elections official obtains the California driver's license or state identification number or social security number for a voter whose registration contains only a unique identifying number, the official shall verify the number and replace the unique identifying number with the appropriate number obtained. This provision is necessary to comply with HAVA section 15483(a)(4), which requires that "The State election system shall include provisions to ensure that voter registration records in the State are accurate and are updated regularly."

**Section 20108.75** requires elections officials to submit to the Secretary of State the voting history of all voters who cast a ballot in each statewide and Federal election by the 60<sup>th</sup> day after each election. This provision is necessary to comply with HAVA section 15483(a)(1)(A)(ii), which requires that "the computerized list contains the name and registration information of every legally registered voter in the State," section 15483(a)(4)(A), which requires that the State election system shall include "A system of file maintenance that makes a reasonable effort to remove registrants who are ineligible to vote from the official list of eligible voters" and which removes from the list registrants "who have not responded to a notice and who have not voted in 2 consecutive general elections for Federal office," and section 15483(a)(1)(A)(vi), which requires that "All voter registration information obtained by any local election official in the State shall be electronically entered into the computerized list on an expedited basis at the time the information is provided to the local official."

**Section 20108.80** provides that each elections official shall certify that the county in which the elections official has jurisdiction over elections is in compliance with all provisions of this chapter for each Federal election by signing the certification form entitled *Certification of Elections Official* and submitting the form to the Secretary of State with the statement of vote required pursuant to California Elections Code section 15375. This provision is necessary to assist in ensuring compliance pursuant to HAVA section 15483(d), which provides that each

State and jurisdiction shall be required to comply with the requirements of these regulations on and after specified dates.

#### **TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDIES, REPORTS, OR DOCUMENTS**

- *Calvoter and Calvalidator Data Standards* (Attached hereto as Exhibit 1)

#### **ALTERNATIVE TO THE PROPOSED REGULATORY ACTION THAT WOULD BE AS EFFECTIVE AND LESS BURDENSOME TO PRIVATE PERSONS**

The Secretary of State has not identified any alternative to the proposed regulatory action that would be as effective and less burdensome to private persons.

#### **ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD LESSEN ANY ADVERSE ECONOMIC IMPACT ON SMALL BUSINESS**

The Secretary of State does not believe that the regulatory action will have any adverse economic impact on business, as the proposed regulations relate to voting, not business. Therefore, no alternative to the proposed regulatory action has been identified that would lessen any adverse economic impact on small business.